



Office of the Attorney General
State of Texas

March 19, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Kevin B. Laughlin
Interim City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR92-105

Dear Mr. Laughlin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15021.

You have received two requests for copies of Midland Police Department records regarding an alleged incident in April, 1986, involving cruelty to animals. Specifically, one requestor seeks a copy of police report #8600542505 filed on April 4, 1986. The second requestor seeks the records and supplements of a report of cruelty to animals in which Kris Thagard was the complainant. You advise us that no formal complaint was ever filed, that the complaint was never investigated, and that no arrests were made in connection with the complaint. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You contend that certain statements contained in a police incident report and the summary of unverified and uninvestigated witness statements are exempt from required public disclosure to prevent possible false light defamation of an individual. In Open Records Decision No. 579 (1990) this office held that "false light" privacy is not a proper consideration under section 3(a)(1) of the Open Records Act. Accordingly, none of the requested information may be withheld from required public disclosure on this basis.

You also claim that release of some of the requested information would constitute "an unwarranted invasion of the privacy of the suspect." Specifically, you

seek to withhold the name of the suspect and any other information which would tend to identify him. The doctrine of common-law privacy protects information containing highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, provided the information is not of legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We have examined the documents submitted to us for review. A press release issued by the suspect includes the information which you seek to withhold. Because the name of the suspect and other information relating him to the complaint has been publicly released by the suspect himself, we conclude that the requested information does not contain "highly intimate facts the publication of which would be highly objectionable to a reasonable person." We also note that in subsequent correspondence to this office, you suggest that the attorney for the suspect has conceded that, in light of issuance of the press release, his client no longer has a common-law privacy interest in the requested information. Accordingly, we conclude that none of the requested information may be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

Finally, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, which excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement. Open Records Decision No. 434 (1986); *see also* Open Records Decision No. 478 (1987).

You advise us that no formal complaint was ever filed, that no investigation was conducted, and that no one was ever arrested in connection with the alleged offense. As you have not indicated how release of the requested information would undermine legitimate interests of law enforcement, and as the documents submitted

to us for review do not supply such an explanation, we conclude that none of the requested information may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-105.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 15021
ID# 15180

Enclosures: Return documents

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